

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Advanced Television Systems and Their)	MM Docket No. 87-268
Impact upon the Existing Television)	
Broadcast Service)	

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

Univision New York LLC ("Univision"), by its attorneys, hereby petitions the Commission for partial reconsideration of the *Seventh Report and Order*, FCC 07-138, adopted in the above-captioned docket on August 1, 2007 and released on August 6, 2007 ("*Seventh Report*"). Specifically, Univision requests that the Commission correct its new post-transition digital television Table of Allotments ("DTV Table") to reflect the correct antenna radiation pattern and effective radiated power ("ERP") for the new DTV channel assigned to WFUT-DT, Newark, New Jersey, which currently operates on an out-of-core channel.¹ It appears that when the Commission changed the station's original tentative channel allotment (Channel 41) to its permanent allotment (Channel 30), it failed to incorporate the Channel 30 antenna pattern/coverage area proposed by Univision. As a result, the DTV Table specifies Channel 30 as WFUT-DT's permanent channel, but with a Channel 41 antenna pattern designed to address interference limitations that would solely affect a Channel 41 operation. Unfortunately, a WFUT-DT facility operating on Channel 30 with the Channel 41 antenna pattern set forth in the DTV Table will serve

¹ Univision is the licensee of WFUT-TV/WFUT-DT, Newark, New Jersey.

619,759 fewer people than are currently receiving service from WFUT-DT's out-of-core transitional DTV channel.

Because of spectrum congestion in the New York City/Philadelphia area, there is no channel available to WFUT-DT that will not create a significant loss of service to WFUT-DT viewers in 2009. However, while some loss of service appears unavoidable, utilizing the operating parameters originally proposed by Univision for Channel 30 will at least reduce the number of people losing service from WFUT-DT from 619,759 to 239,759, preserving broadcast service to 380,000 people. Univision therefore respectfully requests that the Commission correct the antenna pattern in the DTV Table to specify the antenna pattern and corresponding power level originally proposed by Univision,² which is discussed in more detail in Exhibit 1 hereto. To the extent the Commission may ultimately provide licensees with greater flexibility to modify their facilities to prevent *any* loss of service, WFUT-DT stands ready to examine ways in which it can further reduce the substantial loss of service to its viewers that will occur in 2009.

The *Seventh Report* represents the "final step" in the Commission's channel selection process as the nation moves from analog to digital television. As the Commission points out in the *Seventh Report*, one of the most important goals of the DTV transition has been to ensure that "[v]alues for the ERP and the directional antenna pattern were calculated to allow a station to match its coverage area based on its

² See January 25, 2007 Comments of Univision Communications Inc. ("Univision Comments"), Technical Exhibit, at 2, in response to the Commission's *Seventh Further Notice of Proposed Rulemaking, In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, 21 FCC Rcd 12100 (2006).

maximized or replication facilities as certified.”³ For most television stations, the DTV Table meets the Commission’s stated goal. However, as noted in the Univision Comments filed earlier in this proceeding, WFUT-DT is a notable exception, as replication of that station’s current service area is not possible given the limited in-core channels that were available for its permanent DTV operation.⁴

While the Univision Comments generally supported the adoption of the tentative DTV Table proposed in the *Seventh Further Notice*, Univision explained that WFUT-DT was one of the few out-of-core analog stations in the nation that was also assigned an out-of-core channel for its transitional digital operations (Channel 53).⁵ Only by entering into a Negotiated Channel Agreement with co-owned station WXTV(TV), Paterson, New Jersey, was WFUT-DT able to secure an in-core channel assignment, Channel 41.⁶ However, digital operation on Channel 41 would not allow WFUT-DT to construct and operate the fully authorized facilities to which it certified on its FCC Form 381 due to significant interference limitations, resulting in a substantial loss of service to the public.⁷

³ *Seventh Report* at ¶ 19; see also *Seventh Further Notice of Proposed Rulemaking, In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, 21 FCC Rcd 12100 (2006) (“*Seventh Further Notice*”).

⁴ As shown in the Technical Exhibit to the Univision Comments, Univision proposed an ERP of 200 kW, while the Commission’s DTV Table ultimately allotted Univision an ERP of 189 kW. See *Seventh Report*, Appendix B. The differences in the corresponding antenna pattern specifications are described in detail in the Technical Exhibit prepared by du Treil, Lundin & Rackley, Inc., attached hereto as Exhibit 1.

⁵ Univision Comments at 3.

⁶ *Id.*

⁷ *Id.*

Fortunately, Channel 30 later became available for use by WFUT-DT, allowing WFUT-DT to at least more closely replicate the coverage of its licensed transitional DTV facilities.⁸

Univision therefore proposed Channel 30 for WFUT-TV's DTV operations, specifying an antenna pattern and corresponding ERP that comes much closer to replicating the station's current DTV service area.⁹ The Commission adopted the Channel 30 proposal, but, perhaps inadvertently,¹⁰ did not incorporate the proposed Channel 30 operating parameters in the final DTV Table, which instead reflects the non-replicating operating parameters required for a now-unnecessary Channel 41 operation.¹¹

As indicated in the attached Technical Exhibit prepared by du Treil, Lundin & Rackley,¹² use of the correct operating parameters for Channel 30 operation will: (1) prevent approximately 380,000 people from losing access to WFUT-DT's programming when the station moves from its transitional DTV channel to its permanent DTV channel in 2009; (2) comply with all of the FCC's interference criteria with respect to post-transition operations; and (3) keep WFUT-DT's signal entirely within the coverage area certified by the station in its FCC Form 381 filing. In short, correcting the pattern causes no harm, while preserving existing broadcast service to 380,000 people.

⁸ See Exhibit 1 at 2. As indicated therein, use of Channel 30 with the operating parameters originally provided by Univision will allow 98.7% replication.

⁹ See Univision Comments, Technical Exhibit, at 2.

¹⁰ The use of the Channel 41 antenna pattern appears to be merely an error, as the *Seventh Report* fails to state any basis, as required by the Administrative Procedure Act, for rejecting the proposed Channel 30 operating parameters.

¹¹ See *Seventh Report*, Appendix B.

¹² Attached hereto as Exhibit 1.

While Univision presumes the inclusion of the Channel 41 antenna pattern in the DTV Table was merely an oversight that can be easily corrected, if that is not the case, the *Seventh Report* fails to provide any basis for rejecting the station's proposed Channel 30 operating parameters. An agency must "disclose in detail the . . . data upon which [a] rule is based," and an agency decision will be found arbitrary and capricious where it lacks support in the record.¹³ Here, the Commission cites no evidence or reason for rejecting the proposed operating parameters with respect to WFUT-DT's allotment,¹⁴ nor is any basis presented for utilizing an antenna pattern designed for use on Channel 41 rather than for use on Channel 30.

Given the complete absence of any basis in the record for requiring use of the Channel 41 antenna pattern on Channel 30, as well as the extensive loss of service to the public that use of such operating parameters would cause, the DTV Table should be modified to reflect the Channel 30 operating parameters originally proposed by Univision.¹⁵ Accordingly, Univision respectfully requests that the Commission reconsider its specification of the Channel 41 antenna pattern for WFUT-DT's allotted Channel 30 operation, and modify the DTV Table to specify the Channel 30 operating parameters originally proposed by WFUT-DT.

¹³ *NAACP v. FCC*, 682 F.2d 993, 997 (D.C. Cir. 1982).

¹⁴ According to the *Seventh Report* (at ¶ 2, n.1), the post-transition DTV Table will be codified as rule 47 C.F.R. § 73.622(i).

¹⁵ See *Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made'") (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)); *Home Box Office Inc. v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977) (an agency "must disclose in detail the thinking that has animated the form of a proposed rule and the data upon which the rule is based").

CONCLUSION

In order to preserve existing broadcast service to 380,000 people in the New York City area, Univision respectfully requests that the Commission correct WFUT-DT's operating parameters in the DTV Table to specify the parameters originally proposed by the station, which are included in Exhibit 1 hereto. Doing so will bring significant benefit to the public, while causing no harm. Univision therefore urges the Commission to partially reconsider the *Seventh Report* in order to make this correction to the DTV Table.

Respectfully submitted,

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By: /s/

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EXHIBIT 1

TECHNICAL EXHIBIT
PREPARED IN SUPPORT OF A
PETITION FOR PARTIAL RECONSIDERATION IN MB DOCKET NO. 87-268
ADVANCED TELEVISION SYSTEMS AND THEIR IMPACT UPON THE
EXISTING TELEVISION BROADCAST SERVICE
UNIVISION NEW YORK LLC
STATION WFUT-DT (FACILITY ID 60555)
NEWARK, NEW JERSEY
CHANNEL 30

Technical Narrative

This Technical Exhibit supports the petition for partial reconsideration of the Seventh Report and Order, FCC 07-138 ("Seventh Report") of Univision New York LLC ("Univision") which currently operates WFUT-DT on channel 53 at Newark, NJ (Facility ID 60555). Specifically, Univision requests that the FCC correct the new post-transition digital television ("DTV") Table of Allotments to reflect the correct antenna radiation pattern and effective radiated power (ERP) for the new DTV channel assigned to WFUT-DT, Newark, New Jersey.

Station WFUT-DT is currently licensed to operate on DTV channel 53 (BLCDT-20040809AAX) with a directional antenna maximum effective radiated power (ERP) of 310 kilowatts (kW) and an antenna height above average terrain (HAAT) of 321 meters. The antenna center of radiation is 321 meters above ground level (AGL), and 336 meters above mean sea level (AMSL). The transmitter site coordinates are 40-45-22, 73-59-12 (NAD-27). The FCC antenna structure registration number is 1238745. In addition, WFUT-TV is currently authorized to operate on NTSC channel 68 (BPCT-20030805AIL) with a directional antenna maximum ERP of 2630 kW and an HAAT of 424 meters.¹

The FCC changed WFUT-DT's original Tentative Channel Designation (TCD) from channel 41 to its permanent allotment on channel 30 in response to comments filed by Univision in the Seventh Further Notice of Proposed Rule Making ("7th FNPRM") in MB Docket No. 87-268. However, it appears that when the FCC modified WFUT-DT's

¹The facilities authorized in BPCT-20030805AIL have been constructed and a license application has been filed, BLCT-20070125ACK.

permanent allotment to channel 30 it did not incorporate the channel 30 directional antenna pattern and ERP (i.e. coverage area) as requested by Univision in its comments.

Specifically, the DTV Table of Allotments ("DTV Table") specifies channel 30 as WFUT-DT's post transition DTV operation with a directional antenna (Antenna ID 80192) that was intended to be used for the channel 41 operation modified in order to resolve interference issues. In addition, the DTV Table also specifies an ERP of 189 kW-DA and antenna HAAT of 321 meters at site coordinates of 40-45-22, 73-59-12. As detailed below, operation on WFUT-DT's post-transition channel with the facilities set forth in the DTV Table will not permit WFUT-DT to construct full, authorized DTV facilities. As a result, the facilities specified as the post-transition operation do not permit duplication of the area served by the presently licensed WFUT-DT facility, which were "certified" on FCC Form 381 (BCERCT-20041105BAM) in November 2004. Therefore, it is proposed to correct the DTV allotment by changing the ERP and directional antenna that will more closely replicate (98.7%) WFUT-DT's currently licensed operation (BLCDT-20040809AAX). Specifically, it is proposed to operate on channel 30 with an ERP of 200 kW-DA and antenna HAAT of 321 meters at site coordinates of 40-45-22, 73-59-12. Figure 1 provides a horizontal plane relative field pattern for the proposed directional antenna.

It is requested that the Commission modify the Appendix B DTV Table of Allotment specifications to the following:

Facility ID	State & City		NTSC	DTV								
			Chan	Chan	ERP (kW)	HAAT (m)	Latitude (DDMMSS)	Longitude (DDMMSS)	Area (sq km)	Population (thousand)	Percent IX Received	
60555	NJ	NEWARK	68	30	200	321	404522	735912	18,012	17,562	2.0	
Rotation: 0												
0°	0.656		90°		0.590		180°		0.502		270°	0.746
10°	0.908		100°		0.596		190°		0.395		280°	0.996
20°	0.830		110°		0.701		200°		0.289		290°	0.744
30°	0.795		120°		0.473		210°		0.604		300°	0.802
40°	0.704		130°		0.536		220°		0.542		310°	0.793
50°	0.621		140°		0.279		230°		0.807		320°	0.788
60°	0.841		150°		0.407		240°		0.785		330°	0.900
70°	0.583		160°		0.489		250°		0.757		340°	0.658
80°	0.577		170°		0.408		260°		0.746		350°	0.663
Additional Azimuths			227°		0.231		311°		1.000			

An engineering analysis was conducted for the proposed WFUT-DT operation to determine the predicted interference to all other post-transition DTV operations. The analysis calculated net new predicted interference according to the procedures outlined by the FCC in the *Second DTV Periodic Report and Order*² and related Public Notices. The results of the analysis are summarized below and, as indicated, the proposal will comply with the FCC's 0.1 percent interference criteria used for the channel election process:

Post-Transition DTV Allotment Facility	New WFUT-DT interference
WUVP-DT, Ch. 29, Vineland, NJ	0 people (0%)
WFME-DT, Ch. 29, West Milford, NJ	16,013 people (0.11%)
WBZ-DT, Ch. 30, Boston, MA	2,821 people (0.04%)
WSKA-DT, Ch. 30, Corning, NY	35 people (0.01%)
WUTR-DT, Ch. 30, Utica, NY	168 people (0.04%)
WGCB-DT, Ch. 30, Red Lion, PA	1,478 people (0.08%)
WNVT-DT, Ch. 30, Goldvein, NY	0 people (0%)
WTIC-DT, Ch. 31, Hartford, CT	0 people (0%)
WPPX-DT, Ch. 31, Wilmington, DE	0 people (0%)
WPXN-DT, Ch. 31, New York, NY	1,936 people (0.01%)

Below is a tabulation of the predicted service population and area for the various WFUT DTV operations:

Facility	Service Population	Service Area
License/Certified (Ch. 53 310 kW/321 m) ³	17,801,759	18,453 km ²
DTV Table (Ch. 30 189 kW/321 m) ⁴	17,182,000	16,609 km ²
Proposed Operation w/ New DA (Ch. 30 200 kW/321 m)	17,562,000	18,012 km ²

² *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Report and Order, 19 FCC Rcd 18279, 18281 (2004).

³ Service population and area taken from Table II of the FCC Public Notice entitled "DTV Channel Election Information and First Round Election Filing Deadline" released December 21, 2005 (DA 04-3922).

⁴ Service population and area taken from the DTV Table.

As indicated above, WFUT-DT operation on channel 30 with the DTV Table allotment facilities would result in a loss of DTV service to 619,759 persons. However, the channel 30 proposal with the DTV Table specifications originally provided by Univision will allow 98.7% replication and will also permit WFUT-DT to maintain service to 380,000 persons that will otherwise lose service if the channel 30 DTV Table facilities are not corrected as set forth herein. Finally, the channel 30 proposal will maintain WFUT-DT's noise-limited coverage area entirely within the noise-limited coverage area certified by Univision for the station in its Form 381.

Based on the foregoing, the FCC is respectfully requested to correct the WFUT-DT specified allotment facility as described herein.



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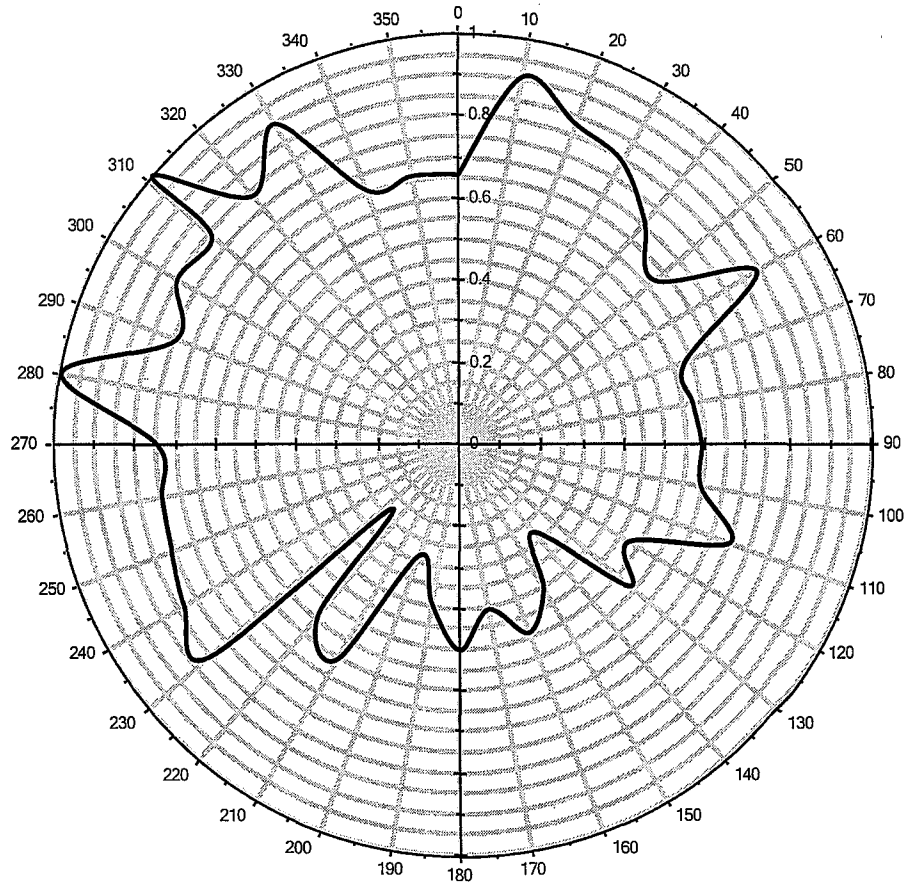
Figure 1

DA Inquiry

du Treil, Lundin, & Rackley, Inc., Sarasota, Florida



Antenna Pattern: Antenna ID: 830001



Note: display reflects rotation of 0.00°

Antenna Details:

0° 0.656	60° 0.841	120° 0.473	180° 0.502	240° 0.785	300° 0.802	227° 0.231
10° 0.908	70° 0.583	130° 0.536	190° 0.395	250° 0.757	310° 0.793	311° 1.000
20° 0.830	80° 0.577	140° 0.279	200° 0.289	260° 0.746	320° 0.788	
30° 0.795	90° 0.590	150° 0.407	210° 0.604	270° 0.746	330° 0.900	
40° 0.704	100° 0.596	160° 0.489	220° 0.542	280° 0.996	340° 0.658	
50° 0.621	110° 0.701	170° 0.408	230° 0.807	290° 0.744	350° 0.663	

Antenna Make: NEW

Standard Pattern:

Antenna Model: Custom

Last Change Date: